LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6531
BILL NUMBER: SB 211

NOTE PREPARED: Jan 11, 2012
BILL AMENDED:

SUBJECT: Generic Drug Bidding Program.

FIRST AUTHOR: Sen. Gard
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
X **FEDERAL**

IMPACT: State

Summary of Legislation: This bill requires the Drug Utilization Review Board (DUR Board) to establish a competitive bidding program for generically equivalent drug product manufacturers of drugs in therapeutic drug classifications with at least three manufactured generically equivalent drug products.

The bill requires a manufacturer that participates in Medicaid or the Children's Health Insurance Program (CHIP) to participate in the competitive bidding program. The bill also requires the Office of Medicaid Policy and Planning to request bids under the competitive bidding program at least one time every five years.

The bill requires the DUR Board to establish a Medicaid preferred generic drug list based on the successful bids and requires prior authorization on the Medicaid program and CHIP for a generically equivalent drug product that is not included on the list. It requires a manufacturer of a generically equivalent drug product that is included on the list to offer state supplement rebates

Effective Date: July 1, 2012.

Explanation of State Expenditures: *Summary:* The Office of Medicaid Policy and Planning (OMPP) has estimated the preferred generic rebate program would cost $166,500 in first year development and administrative expenses and $216,000 annually thereafter for ongoing administrative costs. Medicaid administrative expenditures are matched with 50% federal dollars so the state funding required would be $83,250 and $108,000 for the first two years, respectively. Based on Texas' experience with a similar program, OMPP does not anticipate any definitive level of supplemental rebates to offset the costs incurred.

Additional Details:

The bill establishes a new cost-setting mechanism for Medicaid reimbursement of certain generically equivalent prescription drugs. The bill requires the DUR Board to establish a procedure under which, as a condition of participation in Medicaid and CHIP, generic drug manufacturers are required to submit a bid for specified products that the manufacturer would offer to all Medicaid pharmacy providers in the state. The DUR Board is to determine the Medicaid reimbursement for the top two specified generic drug products in each bid classification. All other generic equivalents in the drug classification would not be included on the Preferred Drug List (PDL) and would be required to have prior authorization before being dispensed.

In essence, the bill requires the DUR to accept bids from generic drug manufacturers to determine which generic manufacturer's drug will be included on the Medicaid PDL for the product. Because the specifications of the bill do not apply to all generic drugs, OMPP would still be required to keep the Maximum Allowable Cost (MAC) process in place. (The MAC is intended to identify the lowest cost for the product before reimbursement rather than seeking a rebate after the sales of the drugs.) Further, the bill does not require the bid to be below the current level of reimbursement determined by the state MAC, so the bids could result in the state paying more for the same drugs in order to receive an unknown level of rebates. The level of savings to be achieved is indeterminate since the extent to which manufacturers might bid below the existing level of the MAC as well as offer a supplemental rebate for a variety of generically equivalent products is unknown. The bill also does not require pharmacy providers to dispense only the selected manufacturer's product; it uses the prior authorization requirement to encourage pharmacies to carry one of the successful bidder's products.

OMPP reviewed other state Medicaid programs for similar approaches to obtaining supplemental rebates from generic drug manufacturers. Texas tried a similar (although not identical) approach in 2004. OMPP reported that the Texas experience found that manufacturer's concerns resulted in almost no manufacturers willing to offer a supplemental rebate. In addition, Texas found it necessary to offer an enhanced dispensing fee per prescription to encourage pharmacies to stock and dispense the preferred generic. As a result, Texas paid more in enhanced dispensing fees than was collected for supplemental rebates.

Background Information on Medicaid Drug Cost: Currently, Medicaid reimburses for prescription drugs by determining the lowest of the following: (1) estimated acquisition cost (EAC) of a drug plus any applicable Medicaid dispensing fee; (2) the state Maximum Allowable Cost (MAC) plus any applicable Medicaid dispensing fee; and (3) the provider's submitted usual and customary charge. The EAC for generic drugs is 80% of the average wholesale cost according to the contractor's database files. The state MAC is the average actual acquisition cost per drug adjusted by a multiplier of at least 1.0. The actual acquisition cost is determined by using pharmacy invoices submitted by pharmacies to the OMPP's contractor. The MAC rule specifies that the use of the multiplier is to ensure the MAC rate is sufficient to allow reasonable access to the drug at or below the established state MAC. Providers submit the cost information as a condition of participation in the Medicaid program. OMPP has estimated that the MAC program annually saves the state approximately $350 M in state and federal dollars each year.

Medicaid and CHIP are jointly funded by the state and federal governments. The effective state share of Medicaid program expenditures is approximately 33% for most services and approximately 23% for the CHIP program. Medicaid and CHIP medical services are matched by the effective federal match rate (FMAP) in Indiana at approximately 67% and 77%, respectively. Administrative expenditures with certain exceptions are matched at the federal rate of 50%.

Explanation of State Revenues: Based on the experience of the Texas Medicaid program with a conceptually similar program, OMPP would not anticipate any definitive level of supplemental rebates to be realized by Medicaid and CHIP.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: OMPP.

Local Agencies Affected:

Information Sources:

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